IN THE SUPREME COURT

APPEAL FROM THE MICHIGAN COURT OF APPEALS
Judges Richard Allen Griffin, Patrick M. Meter, and Bill Schuette

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FILLMORE TOWNSHIP, SHIRLEY GREVING, ANDREA STAM, LARRY SYBESMA, JODY TENBRINK, and JAMES RIETVELD,

Plaintiffs-Appellants,

v

SECRETARY OF STATE and DIRECTOR OF THE BUREAU OF ELECTIONS,

Defendants-Appellees,

and

CITY OF HOLLAND,

Intervenor-Appellee.

Supreme Court
Case No. 126369

Court of Appeals
Case No. 245640

BRIEF ON APPEAL – APPELLANTS

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Dated: December 3, 2004

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I. WHETHER A SINGLE DETACHMENT PETITION AND VOTE THEREON, PURSUANT TO THE TERMS OF THE HOME RULE CITIES ACT("HRCA"), MCL 117.1 ET SEQ, MAY ENCOMPASS TERRITORY TO BE DETACHED TO MORE THAN ONE TOWNSHIP?

PLAINTIFFS-APPELLANTS ANSWER: "Yes"
DEFENDANTS-APPELLEES ANSWER: "No"
THE COURT OF APPEALS ANSWERED: "No"

II. WHETHER A WRIT OF MANDAMUS SHOULD ISSUE TO COMPEL THE SECRETARY OF STATE TO ISSUE A NOTICE DIRECTING AN ELECTION ON THE CHANGE OF BOUNDARIES SOUGHT BY PLAINTIFFS-APPELLANTS?

PLAINTIFFS-APPELLANTS ANSWER: "Yes"
DEFENDANTS-APPELLEES ANSWER: "No"
THE COURT OF APPEALS ANSWERED: "No"

INTRODUCTION

This appeal involves "detachment," which is the reverse of annexation. It is the process by which territory is removed from a city and returned to townships through an election in the affected city and townships. Plaintiffs filed a detachment petition ("Petition") seeking an election under the Home Rule Cities Act ("HRCA"), MCL 117.1 et seq. "There is no ambiguity in the detachment procedure provided for by the home rule cities act. Read literally, its provisions are clear . . . we are precluded from construction or interpretation to vary that plain meaning." Williamston v Wheatfield Twp, 142 Mich App 714, 718-19; 370 NW2d 325 (1985).

Defendant Secretary of State, however, refused to set the required election. The Court of Appeals denied a writ of mandamus, relying upon a published, but divided opinion issued two months earlier in Casco Twp v Secretary of State, 261 Mich App 386; 682 NW2d 546 (2004) (Order, 5/6/04, 30a). The Casco appeal is pending before this Court in Case No. 126120, and this Court has ordered that the two cases be argued and submitted together.

Casco is not a sound basis for the Court of Appeals' Order in this case, so that Order should be reversed. The Court of Appeals majority in Casco imposed a new, nonstatutory requirement for detachment petitions that does not appear in any statute or in prior case law. Instead of following precedent and applying the plain language of the HRCA, the Casco majority (Judges Cooper and Cavanagh) based its decision on (1) what it claimed was "logical" and "fair," (2) case law that has no application to the HRCA or to detachment elections, and (3) an unprecedented interpretation of Mich Const 1963, art 1, § 1.

This case should be decided in accordance with Judge Zahra's dissent in Casco. Judge Zahra recognized (as did Williamston, supra, 142 Mich App at 718-19) that the HRCA's detachment provisions are clear and unambiguous. Read as a whole and in context, the HRCA plainly authorizes the filing of Plaintiffs' Petition and requires the election that Plaintiffs request. Judge Zahra opined in Casco that the majority erred in not reading the HRCA as a whole, and wrongly departed from the HRCA's plain language in deciding the issues raised. Under the facts in Casco (which are substantially identical to the facts in this case), Judge Zahra would have ordered the Secretary of State to certify the Petition and set the requested election.

STATEMENT OF FACTS

A. Factual Background.

Plaintiff Fillmore Township is a general law township located in Allegan County, Michigan.[1] Laketown Township is also a general law township located in Allegan County. Park Township, a general law township, and Holland Charter Township, a charter township, are each located in Ottawa County (collectively, the "Townships"). Intervenor City of Holland ("City") is a home rule city located in Ottawa County and Allegan County, Michigan, established pursuant to the HRCA and Mich Const 1963, art 7, § 21. Defendant Secretary of State is an elected official whose duties include determining if detachment petitions submitted pursuant to MCL 117.11 comply with the HRCA, and, if so, directing that the detachment question be submitted to the electors of the affected municipalities.

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[1]Plaintiff Sybesma is a registered elector and freeholder of Laketown Township. Plaintiff Stam is a registered elector and freeholder residing in Park Township. Plaintiff Rietveld is a registered elector and freeholder of Holland Charter Township. Plaintiff Greving is a registered elector and freeholder of Fillmore Township. Plaintiff Tenbrink is a registered elector and freeholder of the City of Holland.

Between May 2002 and October 2002, approximately 1,023 registered electors and freeholders of the City and the Townships signed and circulated the Petition for the purpose of setting an election on the detachment of certain property ("the Subject Property") described therein from the City to the Townships. (See Petition for Detachment and Affidavit of Charles D. Schaap, 6a-15a; Secretary of State Acknowledgment, 10/30/02 18a). On October 30, 2002, Plaintiffs submitted the Petition (consisting of 85 petition packets) and a supporting affidavit (the "Affidavit") to the Secretary of State pursuant to § 11 of the HRCA, MCL 117.11. Since the Affidavit demonstrated that the Petition met the HRCA's requirements, Plaintiffs requested that the Secretary of State perform her clear legal duties under MCL 117.11 to (a) certify the validity of the Petition, and (b) direct the clerks of the Townships and the City to submit the detachment question to the electors of those municipalities in an election. (See Filing Letter, 10/30/02, 16a).

On November 26, 2002, Defendant Christopher M. Thomas, Director, Bureau of Elections, issued a letter declining to certify the Petition. (See Letter from Defendant Thomas, 11/26/02, 19a). Defendant Thomas stated that the refusal to certify the Petition was based on the circuit court's September 10, 2002, ruling in the Casco case (Ingham Circuit Court Case No. 02-991-CZ, which was later affirmed by a divided panel in Casco, supra).

B. Procedural History.

On December 17, 2002, Plaintiffs commenced this case as an original mandamus action in the Court of Appeals, seeking to compel the Secretary of State to certify the Petition and direct that an election be held in the City and the Townships under MCL 117.6, MCL 117.9 and MCL 117.11. On May 19, 2003, the Court of Appeals ordered that

Plaintiffs' original action be held in abeyance pending the Court's decision in Casco.

On March 25, 2004, a divided panel of the Court of Appeals in Casco affirmed the circuit court's denial of mandamus. The Casco majority (Judges Cooper and Cavanagh) found that MCL 117.11 was ambiguous as to whether a detachment election may involve more than one township. It ignored prior decisions from this Court, which found no error in the use of a single petition to accomplish a change of municipal boundaries between one city and multiple townships.[2] The Casco majority also cited Const 1963, art 1 § 1 as supporting its conclusion that a detachment election may only involve one township. Based on its interpretation of the HRCA, the Casco majority concluded that the Secretary of State did not have a legal duty to set the required election, and affirmed the circuit court's denial of the plaintiffs' mandamus request in that case (Majority Opinion, 21a).

Judge Zahra, dissenting in Casco, explained that the Court of Appeals majority erred in concluding that the HRCA detachment provisions are ambiguous. He stated that the Casco majority erroneously focused solely upon MCL 117.11, and failed to read the HRCA as a whole and in context. Based upon review of MCL 117.6, MCL 117.9, and MCL 117.11, and consistent with the Court of Appeals' holding in Williamston, supra, Judge Zahra concluded that the HRCA plainly allows for a single petition to be filed and for a single election to be held to detach territory from one city to multiple townships. Accordingly, the Secretary of State in Casco was "duty-bound to certify the Petition and conduct the election." Judge Zahra would have ordered the election required by the HRCA (Dissenting Opinion, 27a).

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[2]Cook v Kent Co Bd of Canvassers, 190 Mich 149; 155 NW 1033 (1916); Walsh v Secretary of State, 355 Mich 570, 572-73; 95 NW2d 511 (1959).

On May 6, 2004, the Court of Appeals denied Plaintiffs' Complaint for Mandamus through an Order relying solely on the opinion of the Casco majority:

> "By order entered May 19, 2003, the complaint for mandamus was held in abeyance pending this Court's decision in Casco Twp v Secretary of State, No. 244101. On order of this Court, in light of Casco Twp, [261 Mich App 386; 682 NW2d 546] (No. 244101, issued 3/5/04), the complaint is again considered, and it is denied." [Order, 5/6/04, 30a].

STANDARD OF REVIEW

The outcome of this appeal turns on the proper interpretation of the HRCA. The primary goal of statutory interpretation is to ascertain and give effect to the Legislature's intent. In re MCI Telecommunications, 460 Mich 396, 413; 596 NW2d 164 (1999). This Court reviews questions of statutory interpretation de novo. 460 Mich at 443. If statutory language is unambiguous, the Legislature must have intended the meaning clearly expressed and the statute must be enforced as written; no further judicial construction is either required or permitted. Sotelo v Twp of Grant, 470 Mich 95, 100; 680 NW2d 381 (2004); Sun Valley Foods Co v Ward, 460 Mich 230, 236; 596 NW2d 119 (1999).

To determine if a statute is ambiguous, courts must examine the relevant statutory provisions in context, and may only declare an ambiguity if the statutory provision in question "'irreconcilably conflict[s]' with another provision, . . . or when it is equally susceptible to more than a single meaning." Mayor of City of Lansing v Public Service Comm, 470 Mich 154, 165-66; 680 NW2d 840 (2004) (court's emphasis; citations omitted); Klapp v United Ins Group Agency, Inc, 468 Mich 459, 467, 480; 663 NW2d 447 (2003); American Alternative Ins Co, Inc v Farmers Insurance Exchange, 469 Mich 948; 670 NW2d 567 (2003) (Markman, J., concurring) (the principles used to determine if a contract is ambiguous apply with equal force to statutory construction).

Courts must construe parts of a statute together in the context of the whole statute, bearing in mind the purpose of the Legislature. ABC Supply Co v City of River Rouge, 216 Mich App 396, 398; 549 NW2d 73 (1996); VanGessel v Lakewood Public Schools, 220 Mich App 37, 41; 558 NW2d 248 (1996). If a reasonable construction of a statute considered in context leads to a single reasonable conclusion, an ambiguity does not exist and may not be declared. VanGessel, supra, 220 Mich App at 41-42.

SUMMARY OF ARGUMENT

The Court of Appeals' Order, relying solely upon the Casco majority's decision, is clearly erroneous, has caused material injustice, and is contrary to decisions of this Court and other decisions of the Court of Appeals. As further explained below:

(a) The Casco majority found an ambiguity in the HRCA through use of an improper standard – whether "reasonable minds can differ with respect to its meaning." (24a). "That is not, and never has been, the standard either for resolving cases or for ascertaining the existence of an ambiguity in the law."[3]

(b) The Casco majority found that the HRCA is ambiguous based on its review of only a single section of the HRCA, MCL 117.11, without considering MCL 117.6 through 117.9, where the detachment process is fully developed and clearly articulated. Significantly, the claimed "ambiguity" relates to a phrase that is expressly defined in another section of the same statute.[4]

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[3]Mayor of City of Lansing, supra, 470 Mich at 165-66.

[4]MCL 117.11 (calling for an election in "the district to be affected") and MCL 117.9 (defining the phrase "the district to be affected").

(c) The Casco majority contradicted a prior Court of Appeals decision that the HRCA's detachment provisions are unambiguous and clear.[5]

(d) The Casco majority contradicted this Court's prior holding under the HRCA, approving a single municipal boundary election in one city and multiple townships.[6]

(e) Instead of following the HRCA's plain language, the Casco majority wrongly relied on what it thought was the "fair" and "logical" way to resolve this matter. The Casco majority violated this Court's clear and repeated pronouncements that unambiguous statutes must be applied in accordance with the Legislature's language and not re-written according to the personal views of the judges.[7] Moreover, the Casco majority did not, and could not reconcile its radical interpretation of the HRCA with the HRCA's consistent use of a single petition to accomplish a change of boundaries for multiple townships and a single city in the case of annexations. Instead of following the guiding case law and historical application of the HRCA, the Casco majority digressed completely from the subject of this case, and instead based its decision on a single, irrelevant decision concerning the validity of an attorney fee agreement.[8]

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[5]Williamston, supra, 142 Mich App at 718-19.

[6]Walsh, supra, 355 Mich at 572-73.

[7]Sotelo, supra, 470 Mich at 100; Sun Valley Foods, supra, 460 Mich at 236.

[8]Morris & Doherty, PC v Lockwood, 259 Mich App 38; 672 NW2d 884 (2003).

(f) The Casco majority erroneously held, sua sponte, that the election required by the HRCA "conflicts with the Michigan constitutional mandate" of Const 1963, art 1, § 1. No authority supports the majority's unprecedented interpretation of that provision. Under the Casco majority's view, a court could set aside any election statute if it believed a particular election method were "unfair" as a result of unequal "voting strength." This novel theory would invalidate numerous statutes, and is directly contrary to this Court's ruling that "the annexation question is essentially political . . . and does not involve any vested right or legally protected interest."[9]

(g) The Casco majority failed to follow opinions of this Court that require election statutes to be construed in favor of the right to vote on a question.[10]

ARGUMENT

I. THE HRCA's PLAIN LANGUAGE REQUIRES AN ELECTION.

A. The Casco Majority Erred in Finding That the HRCA Is Ambiguous on Whether a Single Election May Be Held on the Detachment of Property from One City to Multiple Townships.

The Casco majority relied on a flawed standard to find ambiguity in the HRCA, stating that "[s]tatutory language is considered ambiguous when reasonable minds can differ with respect to its meaning." (23a). As this Court explained in Mayor of City of Lansing, supra, the standard for discerning ambiguity is "not, and has never been" whether "reasonable minds can differ regarding the meaning of a statute." 470 Mich at 165-66

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[9]Midland Twp v State Boundary Comm, 401 Mich 641, 669, 670-71, 673; 259 NW2d 326 (1977).

[10]Ferency v Secretary of State, 409 Mich 569, 593; 297 NW2d 544 (1980).

(emphasis added). Rather, "a provision of the law is ambiguous only if it 'irreconcilably conflict[s]' with another provision, or when it is equally susceptible to more than a single meaning." 470 Mich at 166 (emphasis in original). A finding of ambiguity "is to be reached only after 'all other conventional means of interpretation' have been applied and found wanting." 470 Mich at 164, (citing Klapp v United Insurance, supra, 468 Mich at 474 (footnote omitted)).

B. The Casco Majority Failed to Apply the HRCA's Plain Language.

The Casco majority focused exclusively on MCL 117.11, finding that there was ambiguity in that section regarding "the district" where a vote can be taken. (24a). The Casco majority's decision ignored the remaining sections of the HRCA, and violated well-established principles of statutory interpretation.

1. There Is No Ambiguity in "The District."

MCL 117.11 provides relevantly:

> ". . . the secretary of state shall examine such petition and . . . if he shall find that the same conforms to the provisions of this act he shall so certify, and . . . transmit . . . said petition . . . to the clerk of each city . . . or township to be affected by the carrying out of the purposes of the petition, together with . . . a notice directing that . . . the change of boundaries petitioned for shall be submitted to the electors of the **district to be affected** . . . ." [(37a-38a) Emphasis added.]

Plainly, the phrase "the district" in MCL 117.11 is actually part of the larger phrase "the district to be affected." As discussed more fully below, MCL 117.9 expressly defines "the district to be affected" as "the whole of each city . . . or township from which territory is to be taken or to which territory is to be annexed." MCL 117.9. Judge Zahra explained in his Casco dissent that "because the Legislature refers to a single petition as it relates to 'the district to be affected' in MCL 117.11, and the district to be affected is broadly

defined to include multiple cities, villages and townships, I conclude that the unambiguous language of the HRCA allows for a single election to be held to detach territory from a city to multiple townships." (29a).

MCL 117.11's mandate to submit the Petition's question to "the electors of the district to be affected" plainly means that the detachment question must be submitted to "the whole of each city . . . or township from which territory is to be taken or to which territory is to be annexed." Since the Petition seeks to take territory from the City and place it into the Townships, the question of "where a vote can be taken" is answered clearly: the whole of the City of Holland, Fillmore Township, Laketown Township, Park Township and Holland Charter Township. There is no basis in the plain language of MCL 117.9 and MCL 117.11 to deem the phrase "the district" as used in MCL 117.11 to be ambiguous. Klapp, supra, 468 Mich at 467 (courts may not ignore portions of a contract in order to declare an ambiguity).

2. The HRCA's Interrelated Provisions Yield a Single Meaning.

At the risk of belaboring a simple issue, Plaintiffs will proceed to more completely analyze the HRCA's interrelated provisions. MCL 117.11 "does not stand alone. It exists and must be read in context with the entire act, and the words and phrases used there must be assigned meanings as are in harmony with the whole of the statute, construed in the light of history and common sense." Arrowhead Development Co v Livingston Co Road Comm, 413 Mich 505, 516; 322 NW2d 702 (1982).

In addition to the discussion above, it is significant that MCL 117.11 provides that when the "territory to be affected by any proposed . . . change is situated in more than 1 county, the petition hereinbefore provided shall be addressed and presented to the

secretary of state. . . ." MCL 117.11. The Casco majority failed to recognize that "the petition hereinbefore provided" refers to the petition as discussed in the several preceding HRCA provisions (e.g., MCL 117.6, 117.8, and 117.9).[11] Read in context and considered as a whole, the HRCA provides that there may be a single election to detach land from one city to multiple townships.

In MCL 117.6 and several other HRCA sections, the Legislature refers to the "territory affected" or "district affected" by the proposed detachment. The HRCA's plain language shows that the Legislature intended to allow all electors from each local governmental unit within the entire "district affected" to sign a single petition and vote collectively on a single question at a single election that includes all of the units together. MCL 117.6 relevantly describes a single "petition" with signatures "from each city, village, or township to be affected" (emphasis added):

> "Cities may be incorporated or territory detached therefrom . . . by proceedings originating by petition therefor signed by qualified electors who are freeholders residing within the cities, villages, or townships to be affected thereby, to a number not less than 1% of the population of the territory affected thereby . . ., and not less than 10 of the signatures of such petition shall be obtained from each city, village, or township to be affected by the proposed change. . . ." [(32a) Emphasis added.]

Similarly, MCL 117.8 provides for a single petition and a single election within "the district to be affected" by the detachment:

> "Said petition shall be addressed to the board of supervisors of the county in which the territory to be affected by such proposed incorporation, consolidation or change of boundaries

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[11] See also generally 2003 Public Act 303, which will amend the language "the petition hereinbefore provided" in MCL 117.11 to read "the petition under section 6 [MCL 117.6]," effective January 1, 2005.

> is located . . . [I]f it shall appear that said petition conforms in all respects to the provisions of this act, and that the statements contained therein are true, said board of supervisors shall, by resolution, provide that the question of making the proposed incorporation, consolidation, or change of boundaries shall be submitted to the qualified electors of the district to be affected . . . After the adoption of such resolution neither the sufficiency nor legality of the petition on which it is based may be questioned in any proceeding." [(33a) Emphasis added.]

MCL 117.9 defines the "district to be affected," as used in the HRCA's provision regarding who may vote on a detachment "question," MCL 117.8, MCL 117.11, as including "the whole of each city . . . or township" that will gain or lose territory as a result of the detachment:

> ". . . The district to be affected by every such proposed incorporation, consolidation, or change of boundaries shall be deemed to include the whole of each city, village or township from which territory is to be taken or to which territory is to be annexed. . . ." [(35a) Emphasis added.]

MCL 117.10 describes the process for multiple clerks of affected municipalities to conduct a single election in the "district to be affected" relative to petitions filed under MCL 117.8:

> "The county clerk shall, within three (3) days after the passage of the resolution provided for in [MCL 117.8], transmit a certified copy of said petition and of such resolution to the clerk of each city, village or township in the district to be affected by the proposed incorporation, consolidation or change, and it shall be the duty of each of said city, village and township clerks to give notice of the date and purpose of the election provided for by said resolution by publication in one or more newspapers published within said district at least once in each week for four (4) weeks preceding said election, and by posting a like notice in at least ten (10) public places in said district not less than ten (10) days prior to such election." [(37a) Emphasis added.]

MCL 117.11 provides that, where the "territory to be affected" by a proposed

detachment is located in more than one county, the Secretary of State becomes responsible for reviewing the petition and setting the election on the detachment question, with the assistance of the "several city, village, and township clerks." The statute references "the petition hereinbefore provided" by the preceding HRCA sections, and continues the reference to multiple municipalities in the "district."

> "When the territory to be affected by any proposed incorporation, consolidation or change is situated in more than one county, the petition hereinbefore provided shall be addressed and presented to the secretary of state, with 1 or more affidavits attached thereto . . . showing that . . . each signature affixed thereto is the genuine signature of a qualified elector residing in a city, village or township to be affected by the carrying out of the purposes of the petition. . . . The secretary of state shall examine such petition and the affidavit or affidavits, and if he shall find that the same conforms to the provisions of this act he shall so certify, and transmit a certified copy of said petition and the accompanying affidavit or affidavits to the clerk of each city, village, or township to be affected by the carrying out of the purposes of said petition . . . and a notice directing that at the next general election the question of making the . . . change of boundaries petitioned for, shall be submitted to the electors of the district to be affected. . . . The several city, village, and township clerks . . . shall give notice of the election on the question of making the proposed . . . change of boundaries as provided for in [MCL 117.10]." [(37a-38a) Emphasis added.]

A review of the above statutes shows that the HRCA permits a single detachment petition to contain a proposal to detach territory from one city into multiple townships, and permits a single election to occur in the townships and city on that detachment proposal. Section 6 calls for a single petition to be circulated within the "territory affected," which includes "each city . . . or township to be affected by the proposed change." MCL 117.6 (emphasis added). It also requires that notice of that single petition and the question petitioned for be given to "the mayor of each city . . . and supervisor of each township affected thereby," evidencing the Legislature's intent that a single petition may encompass

the detachment of territory to more than one township. MCL 117.6 (emphasis added).

Sections 8 and 11 of the HRCA each provide that "the question of making the proposed . . . change of boundaries petitioned for shall be submitted to the qualified electors of the district to be affected," again clearly stating that there may be a single question presented to the combined electors in each city and each township affected by the proposed change of boundaries. MCL 117.8; MCL 117.11. Any doubt regarding whether the Legislature intended that one question may be presented to the combined electors of each city and each township affected by the proposed boundary change is removed upon review of MCL 117.9, which defines the "district to be affected" as "the whole of each city . . . or township from which territory is to be taken or to which territory is to be annexed."

Section 11 of the HRCA plainly directs the Secretary of State to send a copy of the "petition" to the clerk of "each city . . . or township to be affected," referring to a single "election" on the "question" (emphasis added). The "several city . . . and township clerks" are then required to give notice of "the election" on "the question." MCL 117.11 (emphasis added).

The HRCA repeatedly and consistently refers to a single "petition," a single "resolution," a single "proposition," a single "question" and a single "election." At the same time, the HRCA provides that this single "petition" and "election" relates to the whole "district to be affected," which is composed of "each city . . . or township from which territory is to be taken or to which territory is to be annexed." MCL 117.9. Read in context and construed as a whole, the HRCA plainly permits the submission of a single petition seeking an election on the detachment of property from a city into multiple townships, and to have the matter submitted to an election before all electors of the respective townships

and city.

3. The Casco Majority Rewrote the HRCA to Contain a Limitation Regarding the Number of Townships That Can Be Involved in a Single Detachment Vote.

The Casco majority also apparently found the phrase "each city, village, or township" ambiguous on whether a single election is sufficient to detach territory from a city into more than one township:

> "Similarly, the use of language like 'each city, village, or township' does not clearly imply that more than one township could be involved in such a vote. It seems equally clear that the word 'each' is used because at least two governmental entities are involved in every detachment vote." (24a; emphasis added).

The Casco majority's attempt to find ambiguity calls into question, at most, only one of the many statutory phrases supporting Plaintiffs' plain reading of the HRCA. The Casco majority's correct (and obvious) observation that "at least two governmental entities are involved in every detachment vote" does not support the majority's radical interpretation of the HRCA to forbid more than two governmental entities from participating in a single detachment vote. The majority's reasoning is not even internally consistent. The majority observes that "at least two" governmental entities would be involved in a detachment vote, but holds that only two governmental entities may be involved.

The majority erred by deviating from the plain meaning of the language that the Legislature chose to use. Robinson v City of Detroit, 462 Mich 439, 459-62; 613 NW2d 307 (2000). The words "each" and "several" are not defined by the statute, so they "shall be construed and understood according to the common and approved usage of the language." MCL 8.3a. The Legislature chose to use the words "each" and "several" in the HRCA to refer to more than two municipalities, not only two as the Casco majority held.

The plain meaning of "each" refers to "every (individual of two or more, esp. of a definite number) considered separately from the rest." Webster's New Collegiate Dictionary, p. 258 (1961) (emphasis added) (50a). "Several" means "consisting of an indefinite number more than two." Id., p. 775 (emphasis added) (51a).

The majority also overlooked the Legislature's reference to "a city, village, or township affected" in the first sentence of MCL 117.11. As this Court has recently held, the Legislature's use of the indefinite article, "a," rather than the definite article, "the," can be of defining significance. Robinson, supra, 462 Mich at 445-6, 458-63(distinguishing "a" proximate cause" from "the" proximate cause within governmental immunity statute); State Farm Fire and Casualty Co v Old Republic Ins Co, 466 Mich 142, 147-49; 644 NW2d 715 (2002) (distinguishing "a property protection insurance policy" from "the property protection insurance policy" under the no-fault act); and Massey v Mandell, 462 Mich 375, 3882; 614 NW2d 70 (2000) (distinguishing "the defendant" from "a defendant" for purposes of venue statute).

As this Court explained in Robinson, supra, the use of the definite article, "the," before a singular noun "contemplates one." 462 Mich at 462 (Court's emphasis). If the Legislature had intended that only one township could be involved in a detachment proceeding, it would have referred to "the" city, village or township throughout the HRCA sections quoted above, instead of using language such as "a city, village or township affected," and "each city village or township to be affected," and "the several city, village and township clerks." MCL 117.11.

It is also significant that MCL 117.11 twice refers to the "purposes of the petition" (in the plural form), instead of the "purpose" (singular) of the petition. If the Legislature had

intended to limit a detachment petition to only one "purpose" – that of detaching land to only a single township – it would not have used the plural form of that word.

Without any basis or authority, the Casco majority rewrote the HRCA to include a prohibition that does not appear in the HRCA's plain text. It is axiomatic that courts may not, under the guise of statutory interpretation, either add words to a statute, or rewrite a statute. Hanson v Mecosta Co Road Comm'rs, 465 Mich 492, 504; 638 NW2d 326 (2002); Omelenchuk v City of Warren, 461 Mich 567, 575; 609 NW2d 177 (2000), overruled in part on other grds, 469 Mich 642, 677 NW2d 813 (2004) (proffered interpretations that rewrite statutes must be rejected); Ambs v Kalamazoo County Road Comm, 255 Mich App 637, 650; 662 NW2d 424 (2003) ("a court's constitutional obligation is to interpret, not rewrite, the law"). Similarly, courts may not insert a limitation into a statute if the limitation does not by its plain language appear in the express words of the statute. Birchwood Manor, Inc v Comm'r of Revenue, 261 Mich App 248; 680 NW2d 504 (2004).

The Casco majority never identified any language in the HRCA that limits a detachment vote to only two governmental units. There is no such language. The Casco majority simply rewrote the HRCA to include a limitation that does not appear in the express statutory text. By rewriting the statute, the Casco majority reached a conclusion that defies settled principles of statutory construction and the HRCA's plain language. This Court should therefore reject that interpretation.

C. Prior Authority Holds That the HRCA Detachment Procedures Are "Clear and Unambiguous."

The Casco majority departed from precedent that the HRCA's detachment provisions are "clear and unambiguous." Williamston, supra, 142 Mich App at 719. The Casco majority asserted that (1) unlike here, the Williamston plaintiff asked the Court to

read into the HRCA previously-omitted statutory language requiring an affirmative vote in each of the affected governmental units before a detachment could pass, (2) Williamston "did not hold that all HRCA clauses are unambiguous," and (3) Williamston is not binding precedent (24a-25a). The Casco majority's reasoning misses the key points of Williamston, which correctly held that the HRCA was unambiguous under analogous facts.

In Williamston, city and township residents filed a detachment petition, and there was an election in which the majority of the combined voters in the city and in the township approved the detachment. The city argued that the detachment did not pass because MCL 117.9 did not specify how the votes are to be counted, and that the Court should look to the next best law, i.e., the annexation referendum in MCL 117.9(5), which gives an independent veto power to each unit of government voting separately. The Williamston Court rejected the city's arguments, concluding that the HRCA "is plain on its face and that construction of that act is unnecessary," and that the HRCA does not require each governmental unit to vote separately in favor of the boundary change. 142 Mich App at 715-16, 718-19. The city also argued that the Court should restore some language to MCL 117.9, which previously required each governmental unit to vote separately, on the theory that the Legislature inadvertently omitted the language in the process of amending the HRCA. The Court rejected the city's argument, explaining that "because the language of the provisions now in effect is clear and unambiguous, we are precluded from construction or interpretation to vary that plain meaning." 142 Mich App at 719. The Court specifically reviewed the relevant provisions of the HRCA, including MCL 117.6, MCL 117.7, MCL 117.8, and MCL 117.9, and found those statutes clear and unambiguous relative to the detachment procedure:

> "MCL 117.6 . . . and MCL 117.7 . . . provide procedures for filing detachment petitions. MCL 117.8 . . . provides that the question 'shall be submitted to the qualified electors of the district to be affected.' MCL 117.9(1) . . . provides that '[t]he district to be affected by every such proposed incorporation, consolidation or change of boundaries shall be deemed to include the whole of each city, village, or township from which territory is to be taken or to which territory is to be annexed.' MCL 117.9b . . . added by 1982 PA 465, sets forth circumstances (in addition to those provided by the act) in which territory must be detached from a city. MCL 117.13 . . . provides that the territory shall be detached if the county board of canvassers certifies that a majority of the electors voting on the petition approved it."
>
> "There is no ambiguity in the detachment procedure provided for by the home rule cities act. Read literally, its provisions are clear. . . . "[142 Mich App at 717-18. Emphasis added; MSA citations omitted.]

Accordingly, the Williamston Court found no error in certifying the election and detachment based on the total votes cast in the governmental units. 142 Mich App at 719. Although the Court was not called upon to interpret MCL 117.11, it did interpret MCL 117.8, which is nearly identical to MCL 117.11 for purposes of this case. MCL 117.8 relevantly provides:

> "Said petition shall be addressed to the board of supervisors of the county in which the territory to be affected by such proposed . . . change of boundaries is located . . . if it shall appear that said petition conforms in all respects to the provisions of this act, and that the statements contained therein are true, said board of supervisors shall, by resolution, provide that the question of making the proposed . . . change of boundaries shall be submitted to the qualified electors of the district to be affected at the next general election." [(33a) Emphasis added.]

MCL 117.11 similarly provides:

> "The secretary of state shall examine such petition and . . . if he shall find that the same conforms to the provisions of this act he shall so certify and transmit a copy of said petition and

> the accompanying affidavit . . . to the clerk of each city . . . or township to be affected by the carrying out of the purposes of such petition, together with his certificate and a notice directing that at the next general election. . . the question of making the change of boundaries petitioned for, shall be submitted to the electors of the district to be affected. . . ." [(37a-38a) Emphasis added.]

Given the identical language in the two statutes, and given that the Williamston Court found MCL 117.8 to be "clear and unambiguous," 142 Mich App at 719, the Casco majority erred in finding an ambiguity in MCL 117.11.

D. Applicable Case Law Supports an Election Involving Multiple Townships.

In addition to ignoring the HRCA's plain language and Williamston's application of the HRCA's unambiguous detachment provisions, the Casco majority also improperly refused to follow guiding case law from this Court showing the propriety of allowing a single election to accomplish a change of boundaries affecting one city and multiple townships. Walsh, supra, involved the use of a single petition and a single election to annex property to a city from two townships under the HRCA. The annexation question was submitted to the electors of the city and the townships at a single election, which this Court characterized as a "package" proposition; that is, whether all parcels named in the petition should be annexed to the city. This Court found no error in the "package" petition and election. 355 Mich at 573.

The Casco majority refused to follow Walsh, asserting that it involved "different factual scenarios" (25a), but the majority did not identify any particular facts that render this case different from Walsh. The Casco majority further asserted that Walsh "is largely irrelevant given the HRCA's subsequent amendments" (25a), but the majority did not indicate which "subsequent amendments" to the HRCA warrant a departure from Walsh.

Considering that this Court in Walsh approved (directly or indirectly) the use of a single petition to initiate a single election on a change of boundaries involving a city and two townships, the Casco majority should have followed Walsh.

Insofar as the Casco majority relied on Cook, supra, to support its decision, the majority erred because Cook actually supports Plaintiffs' position on the validity of the Petition. In Cook, it was undisputed that the HRCA authorized a single petition to initiate a boundary change affecting a city and multiple townships. This Court found no error with the use of a single petition to initiate an election on the proposed change of boundaries. Hence, Cook actually supports the validity of Plaintiffs' Petition. 190 Mich at 150-155.

The Casco majority ignored the above pertinent aspect of Cook, but instead seized on the now-obsolete holding in Cook that, under a prior version of the HRCA, the portion of each township to be annexed was required to vote separately in favor of the boundary change before an annexation could occur. See Cook, supra, 190 Mich at 154. The Casco majority apparently overlooked that the Cook Court's 1916 holding on the manner of counting votes was based on unique statutory language that was repealed long ago. The Cook Court construed 1909 Public Act 279, § 9 (the precursor to MCL 117.9, not the current language in MCL 117.9 or MCL 117.11). That former (now non-existent) statutory language expressly mandated separate elections in (1) "the territory to be annexed or detached" and (2) "the remaining portions of such city, village, or township." 190 Mich at 153-154; see also Compiled Law 1915, § 3312 (identical to Public Act 1909, No. 279, § 9, at issue in Cook) (46a). Now, the HRCA unambiguously requires a single election in the entire "district to be affected," which includes the whole of each city and township affected by the proposed boundary changes. The Legislature has made its intent clear by crafting

the HRCA's inter-related provisions to their present form. History and common sense further confirm how the HRCA should be applied. Arrowhead, supra, 413 Mich at 516. The Casco majority's reliance on superseded authority cannot withstand informed review.

E. Claimed "Fairness" and "Logic" May Not Supplant the HRCA's Plain Language.

The Casco majority interpreted the petition in that case to present "two separate questions:" (1) whether to detach land from the City into Casco Township, and (2) whether to detach land from the City to Columbus Township. By extension, in the present case, the Court of Appeals would presumably have deemed the Petition to present "four separate questions," since the Petition proposes to detach land from the City to the four Townships. Based on this premise (which was contrary to the language of the Petition in either Casco or this case, as well as that of the HRCA), the Casco majority deemed it "clearly unfair" to allow the requested election to occur, reasoning that "it is clearly unfair that citizens of one township be allowed to vote on issues that affect another township." It claimed "logic dictates" that the requested single election should not be permitted under the HRCA. For support, the majority cited Morris & Doherty, supra, 259 Mich App at 44 (25a). The Casco majority's reliance on "fairness," "logic," and Morris & Doherty was misplaced.

As a preliminary matter, the Petition here does not entail four separate questions (6a-10a). Instead, the Petition presents a single detachment question that, properly read and understood, is similar to the single question submitted to the city and multiple townships in Walsh, supra, 355 Mich at 572-73, and Cook, supra, 194 Mich at 154.

Also, the single detachment question is consistent with other Legislatively-authorized district-wide elections that are commonplace in other Michigan statutes. The Michigan Legislature has frequently provided for district-wide elections in a variety of

"districts" that include multiple local units of government.[12] If the Casco majority's flawed reasoning were actually valid, then the many existing statutes authorizing a single election in a "district" comprised of multiple cities and townships could likewise be described as "unfair" by activist judges. These statutes could then be judicially rewritten despite the Legislature's plain language and clear intent, based on the judges' personal or political opinions that the residents in one or more municipal units might "unfairly" be allowed to use their "voting strength" to vote on issues that affect other municipal units in that district.

Moreover, as indicated, the Casco majority's interpretation of the HRCA based on "fairness" and "logic," rather than the plain language of the HRCA's detachment provisions, violates well-settled principles of proper statutory construction. Where, as here, the relevant statutory provisions are unambiguous, they must be enforced as written; judicial construction is neither required nor permitted. Frankenmuth Mutual Ins Co v Marlette Homes, Inc, 456 Mich 511, 515; 573 NW2d 611 (1998); In re MCI Telecommunications, supra, 460 Mich at 411. The relevant HRCA provisions are unambiguous, so the issue whether the Petition conforms to the HRCA should have been answered based solely on its language. See Williamston, supra, 142 Mich App at 717-19; Frankenmuth Mutual Ins Co, supra, 456 Mich at 515; Hanson, supra, 465 Mich at 504 (noting that a court's function

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[12]See e.g., Mich Const 1963, art 6, § 8 (election of Court of Appeals judges within broad districts), Mich Const 1963, art 6 § 16 (election of probate judges within multi-county districts); MCL 46.11 (county referendum election in the "district to be affected by the ordinance"), MCL 119.3 (election of metropolitan district officers), MCL 123.1073 (election to authorize tax within community swimming pool district), MCL 168.132 (election of representatives in congressional districts), MCL 168.162 (elections within state representative and senatorial districts), MCL 168.631 (special elections within districts), MCL 168.644k (school district elections), MCL 324.4705 (elections in sewage disposal and water supply districts), and MCL 397.185 (district-wide elections on tax proposals for library districts).

in interpreting a statute is not "to independently assess what would be most fair or just or best public policy," but "to discern the intent of the Legislature from the language of the statute it enacts").

The Casco majority rewrote the HRCA to conform to that majority's policy belief that it had a "better way" to detach city properties than the statutory method that the Legislature provided. The Casco majority had no basis to depart from the plain language of the HRCA, and erred in doing so. Tyler v Livonia Public Schools, 459 Mich 382, 393 n 10; 590 NW2d 560 (1999) ("[o]ur role as members of the judiciary is not to determine whether there is a 'more proper way,' that is, to engage in judicial legislation, but is rather to determine the way that was in fact chosen by the Legislature. To comply with its will, when constitutionally expressed in a statute, is our duty"); Siecinski v First State Bank of Detroit, 209 Mich App 459, 463; 531 NW2d 768 (1995) (courts must apply statutory language as written were its terms are plain, even if a literal construction gives what the court perceives to be an "unfortunate" result).

The Casco majority erred to the extent that it relied on Morris & Doherty, supra, to support its conclusion as to what is "fair." Morris & Doherty involved an attorney referral fee agreement between a law firm and an inactive attorney. The Morris & Doherty Court reasoned that the inactive attorney was prohibited from practicing law, so the fee agreement was unenforceable. 259 Mich App at 45, 49, 58. That case presented no issues concerning municipalities, elections, annexation, detachment, or any issue under the HRCA. Accordingly, Morris & Doherty is inapposite. Nothing in that case supports the Casco majority's elevation of its own views on fairness and logic above the Legislature's will as set forth in the HRCA's plain language.

F. Const 1963, art 1, § 1 Does Not Invalidate the HRCA's Clear Election Procedures.

The last basis the Casco majority gave for its conclusion was that the election would be contrary to Const 1963, art 1, § 1. The Casco majority held, sua sponte, that:

> "Indeed, the townships' combined voting strength could be used to overwhelm the city's voting strength. Such an outcome conflicts with the Michigan constitutional mandate that '[a]ll political power is inherent in the people. Government is instituted for their equal benefit, security, and protection.' Const 1963, art 1, § 1. We therefore find that the HRCA does not permit the type of election requested in plaintiffs' petition. [25a (Emphasis in original).]

The Casco majority's reliance on Const 1963, art 1, § 1, was misplaced. Const 1963, art 1, § 1 (together with art 1, § 2) is one of two clauses in the Michigan Constitution that relate to equal protection. Doe v Dep't of Social Services, 439 Mich 650, 657-658 n 2; 487 NW2d 166 (1992). Tellingly, the majority cited absolutely no authority supporting its interpretation of Const 1963, art 1, § 1 to bar the election allowed by the HRCA. The Casco majority's proposition that the HRCA-authorized election somehow violates the equal protection rights of the City's citizens plainly conflicts with this Court's pronouncement that neither a municipality nor its citizens have legally protected rights in municipal boundaries under the constitution. Midland Twp, supra. In Rudolph Steiner School of Ann Arbor v Ann Arbor Charter Twp, 237 Mich App 721, 740-741; 605 NW2d 18 (1999), the Court of Appeals followed Midland Twp, and expressly rejected a proposed equal protection challenge to a change of municipal boundaries. The Court explained that there was no constitutional violation because the plaintiff had no vested rights in the boundaries of the city or township:

> "Here, plaintiff alleged that defendant township committed a constitutional tort because it violated plaintiff's right to equal protection of the laws by classifying plaintiff's property for annexation on the basis of the date it applies for water service from defendant city. The Equal Protection Clause, Const 1963, art 1, § 2, provides in pertinent part that 'No person shall be denied the equal protection of the laws.' However, in order to establish an equal protection claim, a plaintiff must first demonstrate that a property or liberty interest has been taken away by the defendant's conduct. Bender v City of St Ann, 816 F Supp 1372, 1376 (ED Mo, 1993), aff'd 36 F 3d 57 (CA 8, 1994). See also Roloff v Sullivan, 772 F Supp 1083, 1095 (ND Ind, 1991), aff'd 975 F 2d 333 (CA 7, 1992). In reviewing plaintiff's constitutional tort claim, we must state, once again, that plaintiff had no vested rights, legally protected interests or 'private rights' in the boundaries of either defendant city or defendant township. Midland Twp, supra at 664, 673. Because plaintiff had no legally protected interest in defendant's boundaries, we conclude that it had no vested right or interest that could be affected by defendant township's classification of its property for purposes of annexation, and, consequently, no basis to claim that defendant violated its constitutional right to equal protection under the laws." [Id. at 740-41 (Emphasis added).]

Similarly, there are no vested rights to municipal boundaries in this case, so there is no basis for an equal protection issue under Const 1963, art 1, § 1. The Casco majority should have followed well-established and well-reasoned precedent instead of concocting a radical new interpretation of Const 1963, art 1, § 1, to bar the requested election. Accordingly, this Court should find the Casco majority's reliance on Const 1963, art 1, § 1, to be misplaced, and of no support to its flawed decision.

G. Settled Authority Requires the Construction of Voting Statutes in Favor of Holding an Election.

Michigan's citizens have a "fundamental right" to vote. Wilkins v Bentley, 385 Mich 670, 676; 189 NW2d 423 (1971). This fundamental right may not be impeded nor impaired absent a "demonstrated compelling state interest." Wilkins, supra, 385 Mich at 681-82;

Michigan State UAW Community Action Program v Austin, 387 Mich 506, 514; 198 NW2d 385 (1972). Accordingly, statutes governing the right to vote must be construed in favor of that right. See e.g. Newsome v Bd of State Canvassers, 69 Mich App 725, 729; 245 NW2d 374 (1976); Edwards v Flint City Clerk, 9 Mich App 367, 370; 156 NW2d 153 (1968).

The Casco majority violated these established principles. By refusing to grant the requested election, the majority denied electors the opportunity to vote on the detachment question and improperly deprived the citizens of the City and Townships of their "fundamental right" to vote that the HRCA grants them.

As explained above, the HRCA grants the citizens of the City and the Townships the right to vote on the question of detachment. MCL 117.6; MCL 117.9; MCL 117.11. For example, section 11 of the HRCA provides that the petition "shall be addressed to" the Secretary of State to determine if the petition complies with the statutory requirements. The specific, mandatory language used by the Legislature four times in MCL 117.11 ("shall be addressed" . . . "shall examine" . . . "shall find" . . . "shall so certify") evidences a mandatory duty, not an act of discretion.

This Court strictly enforces these mandatory provisions of the HRCA. In French v Ingham County, 342 Mich 690; 71 NW2d 244 (1955), this Court held that the commissioners had a duty to set the election if the petition met the HRCA's statutory requirements. It emphasized that the Legislature clearly intended prompt elections on city boundary changes, and explained that such elections "should not be subjected to delays and obstacles that might be devised by persons interested in preventing a vote upon the question." Id. at 699 (emphasis added). These cases show that the HRCA not only grants the citizens a right to vote and imposes a duty on the Secretary of State to set the election,

but also affirmatively protects the citizens' right to vote. French, supra, 342 Mich at 699 (quoting Kern v Bd of Supervisors of St. Clair County, 160 Mich 11, 15; 124 NW 941 (1910)).

The opinions in Wilkins and the other voting rights cases cited above make it clear that (1) the right to vote is fundamental, and (2) that right may not be impaired or impeded without a "compelling state interest." The Casco majority failed to recognize the fundamental nature of the citizens' right to vote, and failed to establish any "compelling state interest" to support the denial of an election.

As this Court explained in French, supra, 342 Mich at 699, the "very worst" that could happen through a decision granting an election was that the voters of the City and Townships would have a right to vote on the detachment question, which is what the Legislature clearly intended. MCL 117.6; MCL 117.9; MCL 117.11.

II. THE COURT OF APPEALS SHOULD HAVE ISSUED A WRIT OF MANDAMUS COMPELLING THE SECRETARY OF STATE TO ISSUE A NOTICE DIRECTING AN ELECTION ON THE CHANGE OF BOUNDARIES SOUGHT BY PLAINTIFFS.

A. Standard of Review.

This Court reviews a lower court's decision concerning a request for mandamus for an abuse of discretion. Baraga County v State Tax Comm, 466 Mich 264, 269; 645 NW2d 13 (2002) (citing In re MCI Telecommunications, supra, 460 Mich at 443).

A plaintiff is entitled to a writ of mandamus upon a showing that (1) the plaintiff has a clear legal right to performance of the specific duty sought, (2) the defendant has the clear legal duty to perform the act requested, (3) the act is ministerial and involves no exercise of discretion or judgment, and (4) no other remedy exists that might achieve the same result as mandamus. Baraga County, supra, 466 Mich at 269; McKeighan v Grass

Lake Twp Supervisor, 234 Mich App 194, 211-212; 593 NW2d 605 (1999), overruled on other grds 464 Mich 1 (2001); Radecki v Director of Bureau of Workers' Disability Compensation, 208 Mich App 19, 22; 526 NW2d 611 (1994).

A party that satisfies the statute on which its mandamus action is based is entitled to mandamus. North Oakland Cty Bd of Realtors v Realcomp, Inc, 226 Mich App 54, 57; 572 NW2d 240 (1997). Statutory interpretation is a question of law that is reviewed de novo. In re MCI Telecommunications, supra, 460 Mich at 443.

B. Plaintiffs Have a Clear Legal Right to an Election and the Secretary of State Has a Clear Legal Duty to Set the Election.

The Casco majority held that "the Secretary of State did not have a clear legal duty to authorize the Petition or schedule an election." (26a). The Casco majority never cited a particular provision in the HRCA as unsatisfied.

The procedures required for detachment are unambiguously set forth in the applicable provisions of the HRCA discussed above, including §§ 6, 9, and 11 of the HRCA, MCL 117.6, MCL 117.9, and MCL 117.11. As demonstrated above, Plaintiffs submitted a Petition conforming with the HRCA to the Secretary of State. Williamston, supra. The plain language of MCL 117.11 required the Secretary of State to certify the petition:

> "The secretary of state shall examine such petition and the affidavit or affidavits annexed, and if he shall find that the same conforms to the provisions of this act he shall so certify. . . ." [MCL 117.11 (Emphasis added).]

Since the Petition satisfies the HRCA requirements, Plaintiffs also have the clear legal right under MCL 117.11 and MCL 117.9 to have the Secretary of State set an election on the proposed detachment within the "district to be affected" by the Petition:

> "The secretary of state shall examine such petition and the affidavit or affidavits annexed, and if he shall find that the same conforms to the provisions of this act he shall so certify and transmit a copy of said petition . . . to the clerk of each city . . . or township to be affected by the carrying out of the purposes of such petition, together with . . . a notice directing that . . . the question of making the change of boundaries petitioned for, shall be submitted to the electors of the district to be affected. . . ." [MCL 117.11 (emphasis added).]

Under MCL 117.11, where the petition submitted satisfies the HRCA, Plaintiffs have the clear legal right to have the Secretary of State transmit a copy of the Petition to "the clerk of each city . . . or township to be affected by the carrying out of the purposes of such petition." MCL 117.11. Since the Petition seeks to alter the municipal boundaries of the City and the Townships, each of those municipalities is a "city . . . or township to be affected by the carrying out of the purposes of such petition." Thus, the Secretary of State must transmit a copy of the Petition to the respective clerks of the City and the Townships. MCL 117.11.

Along with her certificate and the Petition, MCL 117.11 directs the Secretary of State to also transmit to the respective clerks "a notice directing . . . the question of making the change of boundaries petitioned for, shall be submitted to the electors of the district to be affected. . . ." MCL 117.11. Upon receiving that notice, the clerks are guided in administering the election by MCL 117.9, which clarifies the particulars of the clerks' responsibility under MCL 117.11 to submit the question petitioned for "to the electors of the district to be affected." MCL 117.9 defines the phrase "district to be affected" as "includ[ing] the whole of each city, village, or township from which territory is to be taken or to which territory is to be annexed."

Since the Petition proposes to take property from the City, and return it to the

Townships, the "district to be affected" by the Petition, as defined in MCL 117.9, includes the City and the Townships. Thus, reading MCL 117.6, MCL 117.9, and MCL 117.11 together, Plaintiffs have a clear legal right under those statutes to have the Secretary of State direct the clerks of the City and the Townships to submit the detachment question to the electors of the City and the Townships. Based on the plain language in the HRCA, Plaintiffs are unequivocally entitled to have the Secretary of State perform the acts requested, and the Secretary of State has a clear legal duty to perform those acts. Williamston, supra, 142 Mich App at 718 ("There is no ambiguity in the detachment procedure provided for by the home rule cities act. Read literally, its provisions are clear."); University Medical Affiliates, PC v Wayne Cty Executive, 142 Mich App 135, 143; 369 NW2d 277 (1985) (a clear legal right, for purposes of mandamus, is one clearly found or granted by law).

Notwithstanding the clear statutory mandates, the Secretary of State (through Defendant Thomas) has refused to (a) certify the Petition, (b) transmit her certificate and the Petition to each City and Township clerk, or (c) give those clerks notice to submit the detachment question to the electors of the City and Townships at the next general election or at a special election. These refusals are directly contrary to the plain legal duties imposed on her by the HRCA. MCL 117.6, MCL 117.9, MCL 117.11.

C. The Acts Requested of the Secretary of State Are Ministerial.

Plaintiffs asked the Secretary of State to certify the Petition and set an election. These acts are ministerial. Bray v Stewart, 239 Mich 340, 345; 214 NW 193 (1927); see also Goethal v Bd of Sup'rs, 361 Mich 104, 112-114; 104 NW2d 794 (1960) (one under a statutory ministerial duty to take actions related to a petition "has no power to pass upon

the merits or reasonableness of the petition"); Attwood v Bd of Supervisors of Wayne County, 349 Mich 415, 420; 84 NW2d 708 (1957).

D. Plaintiffs Have No Other Adequate Remedy to Certify Their Petition and Set an Election on the Detachment Question.

The last prerequisite to the issuance of a writ of mandamus is that Plaintiffs have no other alternative remedy. McKeighan, supra, 234 Mich App at 211-212. Lack of an adequate, alternative remedy exists "when, in practical terms, no legal or equitable remedy would achieve the same result." Id.; Baraga County v State Tax Comm, 243 Mich App 452, 459; 622 NW2d 109 (2000), rev'd on other grds, 466 Mich 264; 645 NW2d 13 (2002); Johnston v Mid-Michigan Telephone Co, 95 Mich App 364, 368; 290 NW2d 146 (1980).

There is no other adequate remedy to vindicate the right to an election. The Secretary of State has refused to discharge her clear legal duties under the HRCA. The HRCA provides no other alternative by which Plaintiffs may have their Petition certified and have an election set, so Plaintiffs have no other adequate remedy to achieve the same result as the writ of mandamus. Scholle v Hare (On Remand), 367 Mich 176, 189-191; 116 NW2d 350 (1962) (mandamus to perform acts requisite to an election is proper); Williams v Secretary of State, 145 Mich 447, 452; 108 NW 749 (1906) (mandamus appropriate to compel the Secretary of State to accept initiative petition for canvass and to submit it to the legislature); City of Saginaw v Bd of Sup'rs of Saginaw, 1 Mich App 65, 69; 134 NW2d 378 (1965) ("mandamus is the proper procedure for a party to use to compel the submission of annexation proposals to the electorate where the petitions in the areas involved had been properly filed").

RELIEF REQUESTED

Plaintiffs respectfully request that this Court reverse the Court of Appeals and direct that a writ of mandamus issue as requested by Plaintiffs.

Respectfully submitted,

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Dated: December 3, 2004

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